

*Sudan Government v. El Baleila Balla Baleila and Others,*

## **Sudan Law Journal and Reports 12 (1958)**

### Case Summary

One day in 1957 a train ploughed into a herd of cattle crossing the railway track in a plain in the Western Sudan, killing or injuring 80 or more head of cattle. The cattle belonged to the family of Arab herdsman from the Baggara tribe who were looking after them. In Baggara culture, cows carry a symbolic and spiritual significance far beyond their cost, or their economic value when used for milk or meat. The train engineer, fearing the herdsman, attempted to hide in a train compartment. But six herdsman found the engineer, argued with him, and then speared him to death.

The herdsman were charged with murder. The Major Court (trial court) acquitted five of the six accused, but convicted one of murder under the Sudan Penal Code. On appeal, he pleaded that he was 'deprived of the power of self-control by grave and sudden provocation' under s 249(1) which defined the offence of manslaughter, or culpable homicide not amounting to murder. The Sudan Penal Code was based on the Indian Penal Code which in turn was based on English criminal law.

The defence of provocation was rejected at first instance. But on appeal the Chief Justice, the Hon. Mohammed Abu Rannat, reduced the finding of murder to manslaughter. He dismissed the suggestion that damaged property can never ground a defense in homicide.

The test used was the English test of the Reasonable [Person]. The test asked: did the accused tribesman, as a Baggaran, behave reasonably? In other words, the test was English but the values of reasonableness were Baggaran. Given the significance of cows in Baggaran culture, the Chief Justice held that the herdsman had behaved reasonably. The Chief Justice did not cite or defer to Baggaran law: rather he took account of Baggaran values. He compared the case to that of a hypothetical homicide by a middle-class government minister in Khartoum, angered by a dent made by a stranger in his prized Mercedes-Benz motorcar.